IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 24.01.2007

CORAM

THE HONOURABLE MR.JUSTICE S.TAMILVANAN

Crl.A.No.466 of 2001

P.K.Palanisamy ... Appellant(Complainant)

vs.

Arumugam ... Respondent (Accused)

Criminal Appeal is preferred against the Judgment of acquittal recorded in C.C.No.297 of 1998, dated 19.03.2001 by the learned Judicial Magistrate - I, Salem.

For Appellant : Mr.T.Arulraj

For Respondent : Mr.C.D.Johnson

JUDGMENT

The appeal is directed against the judgment of acquittal, dated 19.03.2001 recorded in C.C.No.297 of 1998 on the file of the Judicial Magistrate No.I, Salem.

2. The brief facts of the case are as follows :

On 02.10.1995, the appellant / complainant had advanced Rs.5,90,000/- to the respondent / accused for his business, for which, the respondent / accused issued two cheques, dated 08.06.1996, drawn on Karnataka Bank, Salem Branch, each for a sum of Rs.1,00,000/- in favour of the appellant / complainant. According to the appellant / complainant, at the request of the respondent / accused, the same were presented on 22.08.1996, 11.09.1996, 26.09.1996 and 15.11.1996 for payment. The appellant / complainant has specifically stated that only at the request of the respondent / accused, the same were presented on various dates stated above and subsequently, when again at the request of the respondent / accused, it was presented on 06.12.1996 through Bank of Baroda, the same was dishonoured, hence, the appellant / complainant sent a legal notice, dated 07.12.1996, through his advocate. After receiving the notice, the respondent / accused

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sent his reply notice, with incorrect particulars and untrue averments, hence, the appellant / complainant filed a complaint under Section 138 of Negotiable Instruments Act against the respondent.

3. In support of his contention, the appellant / complainant, examined himself, as P.W.1, apart from examining P.W.2, Officer, Bank of Baroda, salem Branch and P.W.3, another officer of Karnataka Bank, Sevapettai Branch, Salem. The documents Ex.P.1 to Ex.P.12 were marked for the appellant / complainant. On the side of the respondent / accused, Ex.D.1 to Ex.D.3 were marked. Considering the evidence both oral and documentary and hearing the arguments advanced by both sides, the trial court dismissed the complaint, aggrieved by which, this appeal has been preferred by the appellant / complainant.

4. Mr.T.Arulraj, learned counsel appearing for the appellant would contend that the criminal complaint under Section 138 of Negotiable Instruments Act, filed by the appellant / complainant was well within time and that the same is not barred by limitation. According to the learned counsel for the appellant, it has been admitted by the respondent that the cheques were issued by him for a sum of Rs.1,00,000/- each. Subsequently, after the cheque was dishonoured, the same was intimated to the respondent / accused and subsequently, only at the request of the respondent, the cheques were again presented on various dates for payment and finally, since the cheques were dishonoured on 06.12.1996, the appellant issued legal notice, dated 07.12.1996 through his counsel. Therefore the time of limitation has to be computed from the aforesaid date and the trial court has erroneously decided the date from the first date, on which the cheque was dishonoured. In support of his contention, the learned counsel relied on the decision in Jogendra Nath v. Dinkar Ram, reported in AIR 1921 Calcutta 644, where it has been held by the Calcutta High Court as follows :

> Limitation Act, Art 60 – "Demand" is different from request for money on account.
> Demands properly so called should be distinguished from requests for money on account.

As per this decision, demand is different from request made to arrange for money. The learned counsel contended that though the cheques issued by the respondent / accused were dishonoured, the appellant / complainant informed the same in a friendly manner to arrange money for enabling the bank to honour the cheques and accordingly, as requested by the respondent / accused, the cheques were presented on various dates. Subsequently, after the cheques

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were dishonoured on 06.12.1996, the appellant / complainant issued his legal notice through counsel on 07.12.1996. Therefore, the date of dishonour is only 07.12.1996, and from the said date, within 15 days, the complaint was lodged and therefore, the complaint has been preferred by the appellant is well within time.

5. According to the learned counsel for the respondent, the appellant has admitted that every time, when the cheque was dishonoured, the appellant use to intimate the same, by way of letters, but, according to the respondent / accused, the letters were the demand made by the appellant.

6. As contended by the learned counsel for the appellant, for a valid demand, there are two aspects needed, one is intimating the dishonour of cheque, another is informing the person, who issued the cheque that if the amount is not paid, legal action under Section 138 of Negotiable Instruments Act would be initiated. In the aforesaid letters, the appellant had intimated only about the dishonour of cheque and that is why, the letters were not produced by the respondent / accused. Only by legal notice, dated 07.12.1996, the appellant / complainant, intimated the respondent / accused about the dishonour of the cheque and also his intention to take legal action, that if the cheque amount was not paid within the time specified by him, the appellant would initiate legal action, under Section 138 of Negotiable Instruments Act. Therefore, for the purpose of demand, the date of the legal notice alone could be taken into consideration.

7. It is not in dispute that the respondent /accused had issued two cheques, dated 08.06.1996, each for a sum of Rs.1,00,000/- in favour of the appellant, which were presented through his bank on 22.08.1996, 11.09.1996, 26.09.1996 and 15.11.1996, but were dishonoured on the said dates, on account of insufficient funds. The letters sent by the appellant herein were not produced and marked by the respondent / accused, for the reasons best known to him. According to the appellant, the letters were only intimations about dishonour of the cheques and requested the respondent to make arrangement, so as to honour the cheques, and immediately, after the last dishonour, legal notice was issued. According to the appellant, in order to maintain cordial relationship, immediately, after the dishonour, the appellant had not issued legal notice, believing the words of the respondent that he would make arrangements to honour the cheques and finally, he issued legal notice, demanding the amount, payable under the cheques and informed him that the non-compliance would result in initiating legal action under Section 138 of Negotiable Instruments Act, if the cheque amount was not paid, within the specified date. The conduct of the appellant presenting the

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cheques on various short dates and sending continuously the letters, intimating the same, would show that, as stated by the appellant, at the request of the respondent / accused, in order to maintain cordial relationship with him, the appellant had presented the cheques on various dates, believing the words of the respondent / accused, that he would make necessary arrangement, to see the cheques be honoured by the Bank.

8. As per Section 138 (b) of Negotiable Instruments Act, notice of demand is mandatory, but, the notice may be sent either through counsel or directly by the payee or the holder in due course, stating the dishonour of the cheque, demanding for the payment of the cheque amount and intimating that non-compliance would result in initiating legal action. Therefore, for the legal notice, sent under Section 138 of Negotiable Instruments Act, thus two important aspects are needed.

1. Intimating the dishonour of the cheque to the drawer.

2. Inform the drawer of the cheque, that the cheque amount should be settled, within the specified time limit, otherwise, legal action would be initiated under Section 138 of Negotiable Instruments Act.

9. Here in this case, it is seen that appellant / complainant had sent only intimations about the dishonour of the cheques, that is why, he had presented the cheques on various dates and finally, by legal notice, the appellant / complainant intimated the respondent / accused that the cheque amount should be settled in his favour, within the specified time limit, otherwise, legal action would be taken against the respondent, under Section 138 of Negotiable Instruments Act. Therefore, I am of the view that the date of demand is only 07.12.1996, as stated by the appellant.

10. The second point argued by the learned counsel for the appellant is that the cheque amount was not paid by the respondent / accused, but produced receipt for the payment of Rs.1,00,000/-, and no such receipt was given by the appellant / complainant, for which the learned counsel drew the attention of this court to the findings of the court below, where the respondent / accused himself has admitted that the signature found in the receipt, Ex.D.2, vary from the signature of the appellant, but according to him, wantonly the signature was put in Ex.D.2 in a different manner by the appellant.

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11. When discharge is pleaded by person, the burden is upon the person, who claims discharge, by way of producing receipt and establishing the same. Here in this case, it has been admitted that the appellant / complainant has denied the signature and further, the signature found in the alleged receipt, as admitted by the respondent is different from the signature of the appellant and hence, the respondent / accused, has not established that it was the receipt given by the appellant. Therefore, I am of the view that the finding of the court below, in this regard, is against the evidence available on record. As per various ruling of the Hon'ble Apex Court, if the finding is against the evidence or not based on evidence, it would be construed as perverse finding and if there is perverse finding of the court below, resulting in failure of justice, this Court has to interfere with the same, in order to meet the ends of justice.

12. Considering the facts and circumstances, I am of the view that, it would be proper to provide reasonable opportunity to both sides, to decide the genuineness of the receipt, produced by the respondent, with the help of expert opinion, if needed. Hence, in the interest of justice, I find it reasonable to allow this appeal and remit back the matter to the trial court for fresh disposal, according to law.

13. In the result, the appeal is allowed and the Judgment of acquittal, rendered by the court below is set aside. The trial court is directed to dispose the case, according to law, solely, based on evidence, after giving reasonable opportunity to both parties. Further, the trial court is directed to dispose the same, within a period of three months from the date of receipt of a copy of this order.

tsvn

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Judicial Magistrate - I, Salem.
2. The Chief Judicial Magistrate, Salem.

KG(CO)
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